

**TIMOTHY LEE ARMSTEAD**  
Claimant

**IFR SYSTEMS INC.**

AND

# PENNSYLVANIA MFRS. ASSOCIATION

Docket No. 1,007,932

Respondent requests review of a January 16, 2003, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

The Administrative Law Judge (ALJ) determined claimant suffered accidental injury on December 5, 2002, when he slipped on ice and fell in the parking lot at work. Consequently, the ALJ awarded claimant medical and temporary total disability compensation benefits.

The sole issue listed in the respondent's request for review is whether claimant suffered accidental injury arising out of and in the course of employment. Respondent denies the accident occurred because the claimant did not immediately report the incident. Approximately four hours after the incident the claimant's supervisor had a meeting with claimant to reprimand him for arriving late at work the previous day. At the conclusion of the brief meeting, the claimant mentioned the slip and fall to his supervisor.

Claimant argues the accident was reported the day it occurred and the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

When claimant arrived at work a little before 6 a.m. on December 5, 2002, he parked his vehicle in respondent's parking lot. Claimant got out of his car and started walking toward his workplace when he slipped on ice and fell hitting the back of his head.

Claimant got up, went into the building, clocked in and began working. As he worked he developed a headache. At approximately 10 a.m., claimant met with his supervisor to discuss the fact claimant had been late to work the previous day. At the conclusion of the brief meeting, claimant advised his supervisor about the slip and fall incident and was told to report the incident to human resources.

Claimant explained he had not reported the incident earlier because he was embarrassed but that he became concerned when he began having double vision at the meeting with his supervisor. Claimant's supervisor did not recall whether claimant mentioned having double vision but agreed if he had been told he would have remembered.

When claimant reported the incident to the human resources manager, he was told the accident was not work-related because he was not on the clock. But he was given an Employee's Report of Incident form to fill out.<sup>1</sup> The claimant never returned the form. At the meetings with his supervisor and human resources manager the claimant never requested medical treatment.

Claimant attempted to return to work but soon clocked out and went home. His wife called respondent's human resources manager and told her claimant was in a great deal of pain and was scheduled to see his personal physician that afternoon. The human resources manager told claimant's wife that was alright under the unauthorized medical provisions but that arrangements would be made for claimant to see a doctor authorized by respondent.

At the time of the preliminary hearing, claimant was still receiving medical treatment under the direction of respondent's doctor. A history of a slip and fall on ice at work was provided to the doctor. Dr. Paul S. Stein diagnosed claimant with a closed head injury, post concussion syndrome as well as cervical strain and posttraumatic or cervicogenic headache.

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<sup>1</sup> P.H. Trans., Resp. Ex 2.

The Workers Compensation Act places the burden of proof upon claimant to establish his right to an award of compensation and to prove the conditions on which that right depends.<sup>2</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>3</sup>

At the preliminary hearing respondent argued that if the injury had occurred as claimant alleged, he would have immediately reported it. But the incident was not reported until after claimant was reprimanded. Respondent infers claimant fabricated the incident in response to the reprimand from his supervisor.

Claimant described the onset of a headache and that he later began to have double vision. He then became concerned. He sought medical treatment and was diagnosed with a closed head injury. Claimant had suffered a closed head injury and was not thinking well. The medical records indicate claimant experienced memory loss and "He is not thinking well and appears to be somewhat slow in what he does."<sup>4</sup> That could well explain why claimant did not immediately report the incident. And claimant said he did not become concerned until the onset of double vision symptoms.

And it cannot be said claimant's failure to ask for medical treatment was suspect. When claimant reported the incident to his supervisor, the supervisor admitted he was unsure what the procedure was and simply directed claimant to human resources. It was not inconsistent to fail to request medical treatment from the human resources manager after she had advised claimant the slip and fall was not work related.

The ALJ observed claimant testify and, therefore, had the opportunity to assess his credibility. The ALJ also observed the claimant's supervisor and human resources manager testify. The ALJ was persuaded by claimant's testimony and granted his request for benefits. At this juncture of the claim, the Board affirms the ALJ's finding and conclusion that claimant suffered an accident that arose out of and in the course of employment with respondent. Claimant's testimony, corroborated by the information contained in the medical records, establishes that it is more probably true than not that claimant suffered a closed head injury in a slip and fall at work and that on December 5, 2002, he gave respondent timely notice of the accident, as required by the Workers Compensation Act.<sup>5</sup>

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<sup>2</sup> K.S.A. 44-501(a); see also *Chandler v. Central Oil Corp.*, 253 Kan. 50, 853 P.2d 649 (1993) and *Box v. Cessna Aircraft Co.*, 236 Kan. 237, 689 P.2d 871 (1984).

<sup>3</sup> K.S.A. 44-508(g). See also *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>4</sup> P.H. Trans., Cl. Ex. 1.

<sup>5</sup> See K.S.A. 44-520.

**AWARD**

**WHEREFORE**, the January 16, 2003, Order of Administrative Law Judge Nelsonna Potts Barnes is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March 2003.

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BOARD MEMBER

c: James B. Zongker, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation